

## **REMARKS**

After entry of the above amendment, claims 1-4, 6-13, 15-21, and 23-37 are pending in the application. Features of claims 5, 14, and 22 have been incorporated into their parent independent claims. Claims previously depending on claims 5, 14, and 22 have been amended to depend on their parent independent claims. No new matter has been added by this amendment. Applicants submit the foregoing amendment to place the case in condition for allowance or appeal.

Applicants acknowledge that the Examiner has withdrawn the rejection of claim 6, following Applicants' amendment filed on November 2, 2007. Applicants also acknowledge that the Examiner has withdrawn the rejection of claims 1, 4-7 9, 14, 15, 17, 22-21, 26 and 37 under 35 U.S.C. §101.

### ***Claim Rejection – 35 U.S.C. §101***

The Examiner continues to maintain his rejection of claim 16 under §101, as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

With respect to claim 16, the Examiner argues it is directed to non-statutory subject matter because it essentially sets forth *functional* descriptive material because it simply recites a series of means (without any specific structure) and associated functional language. See Office Action, p. 4 (emphasis added). Claim 16 is recited in what is known as means-plus-function form in accordance to 35 USC Section 112, paragraph 6. The Applicants respectfully direct the Examiner's attention to Section 112, which expressly states that elements in a claim for a combination may be expressed as a means for performing a specified function without the recital of structure. Claim 16 fully complies with Section 112. The Examiner's requirement that Applicants recite more than just functional language for terms expressed in means-plus-function form is squarely at odds with patent laws of the United States (namely Section 112). The recitation of particular structural limitations would defeat the purpose of means-plus-function claims as allowed under the patent laws of the United States.

In addition, the Examiner's premise, stated at p. 4 of the Office Action, that the apparatus of claim 16 can be reasonably interpreted in view of the specification as "software, *per se*" is incorrect. Figure 1 shows a processor-based system which is capable of implementing the functions recited by claim 16. Hence, claim 16 is not limited to "software, *per se*."

The Applicants thus respectfully request the Examiner to withdraw the non-statutory rejection regarding claim 16.

### ***Claim Rejection – 35 U.S.C. §102***

Claims 1-29 and 31-37 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,193,191 (***McKeeman***). Applicants respectfully traverse this rejection.

For ease of discussion, claim 24 is addressed first. Among other things, claim 24 calls for initiating processing of at least a portion of the modified source files, *i.e.*, one or more source files that have been modified, before receiving a request to process the modified files. The Examiner asserts that this feature is taught in ***McKeeman*** at col. 11, ll. 44-61. *See* Office Action, p. 12. The cited passage describes reusing previously gathered information (such as compiled code) at recompilation if the source text has not changed. *See McKeeman*, col. 11, ll. 44-61. Thus, this passage describes that, when recompilation is initiated, the compiler will compile only the changed files and will not recompile the unchanged source text, thereby saving unnecessary computation. This passage, however, does not describe initiating processing of one or more of the modified source files before a request to process the one or more source files (*i.e.*, in ***McKeeman***'s case, a request to recompile the changed files) is received. The "recompilation" in ***McKeeman*** involves the reuse of previously compiled code derived from unchanged source text, and compiling only those source files that have been changed. Notably, the changed files in ***McKeeman*** are processed after the user initiates the request to recompile (col. 5, ll. 15-17). In contrast, claim 24 calls for initiating the processing of modified source files before receiving the request to process the modified source files. For at least this

reason, claim 24 and its dependent claims are allowable.

Next, claim 1 will be discussed. As amended, and among other things, claim 1 calls for initiating compilation of a file in a processor-based system in advance of a request from a user to compile the file, wherein initiating compilation of the file comprises compiling the file in response to determining that the file has been modified. Claim 1 is in contrast with *McKeeman* in that modified files in *McKeeman* are processed after the user initiates a request to compile (*ibid.*).

The other independent claims are also allowable for claimed features recited therein.

Turning to at least some of the dependent claims, claims 2-3, 12-13, 18-21, and 32-35 all recite the production of an object code file after compilation is initiated. In contrast, *McKeeman* is directed to generating debugged source code, not object code, and teaches later use of a different compiler to generate object code (col. 5, ll. 48-57).

The other dependent claims are also allowable for claimed features recited therein.

### ***Claim Rejection – 35 U.S.C. §103***

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over *McKeeman* in view of U.S. Patent Publication No. 2005/0108682 (*Piehler*). Applicants respectfully traverse this rejection. Claim 30 depends indirectly from independent claim 24. Because *McKeeman* doesn't disclose all of the features of claim 24 (for reasons discussed earlier), it likewise fails to teach the features of dependent claim 30. For at least this reason, claim 30 is allowable.

Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, these arguments are moot and, therefore, not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter are not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization.

In view of the foregoing, it is respectfully submitted that all pending claims are in condition

for immediate allowance. The Examiner is invited to contact the undersigned attorney at (713) 934-4064 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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